

## Calendar No. 94

104TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
104-71

### EXTENSION OF COMMENCEMENT OF CONSTRUCTION DEADLINE FOR CERTAIN HYDROELECTRIC PROJECTS LOCATED IN THE STATE OF WEST VIRGINIA

APRIL 27 (legislative day, APRIL 24), 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### REPORT

[To accompany S. 359]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 359) to provide for the extension of certain hydroelectric projects located in the State of West Virginia, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

1. On page 2, line 1, following “section,” insert “and”.
2. On page 2, line 2, strike “and the procedure specified in that section,”.

#### PURPOSE OF THE MEASURE

The purpose of S. 359 is to extend the deadline contained in the Federal Power Act for the commencement of construction of two FERC-licensed hydroelectric projects located in the State of West Virginia.

#### BACKGROUND AND NEED

Section 13 of the Federal Power Act requires a licensee to commence the construction of a hydroelectric project within two years of the date of the issuance of the license. That deadline can be extended by the FERC one time for as much as two additional years. If construction has not commenced at the end of the time period, the license is terminated by the FERC. Thus, in the absence of this legislation, the FERC would terminate the license at the end of the

time period authorized under the Federal Power Act for commencement of construction.

S. 359 would extend the time required to begin construction to October 3, 1999 for two hydroelectric projects (Projects Nos. 6901 and 6902) at New Cumberland and Willow Island on the Ohio River.

#### LEGISLATIVE HISTORY

S. 359 was introduced by Senator Byrd (for himself and Mr. Rockefeller) on February 6, 1995. Last Congress, these provisions were included in S. 2384 as passed by the Senate on October 5, 1994.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on March 15, 1995, by a majority vote of a quorum present, recommends that the Senate pass the bill as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

#### YEAS

#### NAYS

Mr. Murkowski  
Mr. Hatfield <sup>1</sup>  
Mr. Domenici  
Mr. Nickles <sup>1</sup>  
Mr. Craig  
Mr. Thomas  
Mr. Kyl <sup>1</sup>  
Mr. Grams  
Mr. Jeffords <sup>1</sup>  
Mr. Burns  
Mr. Campbell  
Mr. Johnston  
Mr. Bumpers  
Mr. Ford  
Mr. Bradley  
Mr. Bingaman <sup>1</sup>  
Mr. Akaka  
Mr. Wellstone

<sup>1</sup> Indicates vote by proxy.

#### COST AND BUDGETING CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 26, 1995.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 359, a bill to provide for the extension of certain hydro-

electric projects located in the State of West Virginia, as ordered reported by the Senate Committee on Energy and Natural Resources on March 15, 1995. CBO estimates that enacting the bill would have no net effect on the federal budget.

The bill would extend the deadline for construction of two hydroelectric projects currently subject to licensing by the Federal Energy Regulatory Commission (FERC). These provisions may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the commission charges. Hence, the bill's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. In addition, CBO estimates that enacting the bill would have no significant impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this measure.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the bill. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would result from the enactment of this measure.

#### EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Federal Energy Regulatory Commission setting forth Executive agency relating to this measure are set forth below:

FEDERAL ENERGY REGULATORY COMMISSION,  
*Washington, DC, March 14, 1995.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letters of February 27 and March 2, 1995, and Committee staff's inquiries of March 13 and 14, requesting my comments on a number of bills to allow for the extension of the construction deadlines applicable to nine hydroelectric projects licensed by the Federal Energy Regulatory Commission. Because it is my understanding that the Committee

is scheduled to mark all these bills on March 15, I have combined my comments on these bills in one letter.

This letter also responds to your March 2, 1995 request for comments on S. 225, a bill to remove the Commission's jurisdiction to license projects on fresh waters in the State of Hawaii; and to Committee staff's March 13 request for comments on S. 522, a bill to exempt from Part I the Federal Power Act the primary transmission line for a project in New Mexico. The bills fall into four general categories. Each bill is discussed below.

1. *Extension of Statutory Deadline to Commence Construction.*—Section 13 of the Federal Power Act requires that construction of a licensed project be commenced within two years of issuance of the license. Section 13 authorizes the Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, Section 13 requires the Commission to terminate the license.

As a general principle, I do not support the enactment of bills authorizing or requiring construction extensions for individual projects. However, if such extensions are to be authorized, as a matter of policy I would object to granting a license more than ten years from the issuance date of the license to commence construction. In my view, ten years is a more than reasonable period for a licensee to determine definitely whether a project is economically viable and to sign a power purchase agreement. If a licensee cannot meet such a deadline, I believe the site should be made available to potential competitors.

I do not have specific objections to the proposed legislation, except with respect to the ten year maximum time period to begin construction. Suggestions on how to conform the legislation to that principle are noted.

\* \* \* \* \*

S. 359

S. 359 would require the Commission to extend until October 3, 1999, the deadline for commencement of construction of Project Nos. 6901 and 6902.

The two projects in question were both licensed to the City of New Martinsville, West Virginia, on September 27, 1989. The Commission issued licenses to construct and operate the 37-megawatt New Cumberland Project No. 6901 at an existing Corps of Engineers dam on the Ohio River, in Hancock County, West Virginia; and the 35-megawatt Willow Island Lock and Dam Project No. 6902 at an existing Corps of Engineers dam on the Ohio River, in Pleasant County, West Virginia, and Washington County, Ohio.

The original deadline for commencement of construction of each project was September 26, 1991. The Commission rescinded the license for Project No. 6901 for lack of issuance or waiver of state water quality certification for the project, and subsequently re-issued the license once state water quality certification was issued. This resulted in a new deadline of October 3, 1993, to commence construction of the project. This deadline was subsequently extended to October 3, 1995, because the licensee needed additional time to secure project financing.

The Commission stayed, pending judicial review, most of the requirements of Project No. 6902 including the construction deadline) from March 28, 1991, to April 16, 1992, which resulted in a new construction deadline of October 15, 1992. This deadline was subsequently extended to October 15, 1994, to allow the licensee the additional time requested to secure project financing.

For Project No. 6901, construction entails building a 600-foot-long intake channel, a powerhouse, and a 649-foot-long tailrace, and adding a primary transmission line and related facilities. For Project No. 6902, construction entails building a 980-foot-long approach channel, a powerhouse, and an 865-foot-long exit channel, and adding a 1.5-mile-long transmission line and related facilities.

\* \* \* \* \*

Thank you for offering me an opportunity to comment on bills affecting the Commission's hydropower program. If I can be of further assistance to you in this or any other Commission matter, please let me know.

With best wishes,

Sincerely,

ELIZABETH A. MOLER, *Chair*.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 359, as ordered reported.

